

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32**

PACIFIC GAS AND ELECTRIC COMPANY

Employer

and

Case 32-RC-223579

**ENGINEERS & SCIENTISTS OF CALIFORNIA,
LOCAL 20, INTERNATIONAL FEDERATION OF
PROFESSIONAL AND TECHNICAL ENGINEERS
(IFPTE), AFL-CIO/CLC**

Petitioner

DECISION AND DIRECTION OF ELECTION

The Engineers & Scientists of California, Local 20, International Federation of Professional and Technical Engineers, AFL-CIO/CLC (Petitioner) seeks a self-determination election under the Board's *Armour-Globe*¹ doctrine to determine whether a group of 40 associate, career, and senior sourcing specialists (the Voting Group) should be included in an existing bargaining unit of over 3,500 employees, which includes some but not all technical and professional employees, who are currently represented by the Petitioner. Pacific Gas & Electric Company (the Employer) maintains that the Voting Group sought by the Petitioner is not appropriate because sourcing specialists are managerial and exempt from representation under the National Labor Relations Act (the Act).

A hearing officer of the National Labor Relations Board (the Board) held a hearing in this matter and the parties orally argued their respective positions during the hearing. As explained below, based on the record and relevant Board law, I find that the employees in the petitioned-for Voting Group are not managerial and share a community of interest with the existing bargaining unit. I therefore conclude that it is appropriate to hold a self-determination election among the employees in the Voting Group and I am directing a self-determination election therein.

STATEMENT OF FACTS

The Employer is a utility company headquartered in San Francisco, California, which delivers gas and electricity to residential and commercial customers located in Northern and Central California. The parties have had a continuous bargaining relationship since at least 1952, when the Petitioner was certified as the representative of a unit of employees in classifications not specified in the record. Since 1952, at least 26 groups of employees in multiple professional and technical classifications have been added to the existing bargaining unit either through Board-conducted elections or card check recognition. Currently, the Petitioner represents an existing unit of over 3,500 of the Employer's professional and technical employees working in hundreds of separate job classifications in approximately 100 facilities throughout California.

¹ *Armour & Co.*, 40 NLRB 1333 (1942), and *Globe Machine Stamping Co.*, 3 NLRB 294 (1937).

A. Evidence of Sourcing Specialists Job Duties and Responsibilities

Sourcing specialists are responsible for procuring goods and services across all of the Employer's lines of business, including electrical, construction, engineering, and environmental remediation work. This includes processing requests for goods and services, cutting purchase orders, and negotiating contracts with suppliers. The duties of sourcing specialists are generally the same regardless of associate, career, or senior level, with the difference being that senior sourcing specialists have more years of service than career sourcing specialists and senior sourcing specialists typically work on more complex contracts.²

Before completing their procurement tasks, sourcing specialists receive requests for supplies or projects (known as requisitions) that are initiated by employees in the Employer's other lines of business/divisions. These requests are imputed into the Employer's internal computer system. The requisition is then assigned to sourcing specialists by their individual supervisors.³ Depending on the complexity of the request, sourcing specialists may communicate with the requestor to get more information and clarify the need of specific goods or services. After the needs of the requestor are understood, sourcing specialists determine if a master service agreement exists that would cover the request. The Employer has numerous master agreements in place, which set the terms and prices for certain goods and services. Senior Sourcing Specialist Marcos Imperial (Imperial)⁴ largely corroborated this account. Along the same lines of master service agreements, Imperial testified that he currently works on creating master catalogues to streamline ordering of goods under \$500,000.⁵

² Coleman testified that there are currently no employees in the associate sourcing specialist position as the last employee to occupy that role was promoted to the title of career sourcing specialist.

³ For example, engineers, or their assistants, create engineer's materials memos, which include all of the information required to create a requisition. That information is eventually imputed into the Employer's electronic computer system and then transmitted to a supervisor that assigns the project to a sourcing specialist for procurement.

⁴ Imperial procures for the Employer's Buy America program, which applies to federally funded projects that seek materials that are sourced from within the United States. Previous to cataloging, Imperial worked as a sourcing specialist that purchased goods and services as requested by the Employer's various lines of business. Imperial reviewed the requests, ensured that the requests were accurate in terms of sourcing and what was needed for the project, requested follow-up information if need-be, and eventually approved the request. Where follow-up information is needed, in cases where there was an error in the purchase request, the sourcing specialist requested more information in order to approve the requisition.

⁵ These catalogues for goods and services are created in conjunction with discussions with supervisors and buyers. In creating these streamlined catalogues, Imperial testified that he did not perform any negotiations; rather, he references master agreements for pricing and terms to create an "Amazon.com" like experience. In cases where there is a need for goods or services and there is no applicable master service agreement, Imperial approaches a supervisor in a specific line of business and identifies the potential catalog opportunity. If the supervisor approves the need for a catalog, then the supervisor assigns the task of creating a catalog to one of their sourcing specialists. Imperial eventually conceded on cross-examination that he primarily works on cataloging more than other sourcing specialists and that he is one of just two sourcing specialists that have the technical expertise to catalog.

Steve Coleman (Coleman) is the Senior Director of the Employer's Electric Supply Chain and Sourcing Operations. His duties include oversight and accountability over sourcing specialists⁶, as well as being responsible for emergency response for the company and strategic sourcing for all electric generation and support functions. The Procurement Director, Dave Kevane, reports to him. Sourcing specialists work under Kevane. Based on this chain of command, other managers, category leads, and supervisors that oversee the work of sourcing specialists, ultimately report to Coleman. He testified that his team is responsible for spending about half of the total sourcing amount of approximately \$6,000,000,000 in annual spending by the Employer.

According to Coleman, the sourcing specialists have independent discretion to negotiate the costs of the goods and service contracts within certain levels. Senior sourcing specialists can independently execute a contract for goods and services worth up to \$500,000 on projects totaling \$5,000,000 whereas a career sourcing specialist can execute a contract for goods and services worth up to \$250,000 on projects totaling \$2,000,000.⁷ These levels in which sourcing specialists can independently execute contracts comprise about 70% - 80% of their work. In addition to negotiating new contracts, sourcing specialists routinely use their independent judgment to renegotiate existing contracts, including pricing, limitations and liabilities, warranty, and indemnification terms.

Coleman testified that sourcing specialists have the independent authority to determine whether to make a purchase order using the master service agreement or to request bid proposals from outside vendors in an effort to find a deal with more advantageous terms. If sourcing specialists choose to go outside of the master agreement for goods or services, they have the independent authority to choose vendors for consideration. To determine if a vendor is qualified, the sourcing specialist examines the supplier's capabilities, safety records, and other factors that they independently research. Moreover, if multiple independent requests come in for similar materials or services, the sourcing specialists use their independent judgment to combine orders to maximize efficiency and cost savings. Where there is no applicable master service agreement, sourcing specialists identify the vendors that they want to solicit bids from, and depending on the project, they may visit the jobsite to answer questions from project managers and others involved in the requisition. Along the same lines, Imperial testified that he interacts with field engineers frequently by procuring their requested materials and fixing mistakes when incorrect materials are sent for a work project. If the sourcing specialists do not have questions or concerns, they may go directly to creating a request for proposals to send to vendors for bidding. If a dispute arises over the terms of the contract the sourcing specialists handle the matter independently. Notably, sourcing specialists do not determine the type or amount of material ordered. That is handled by the requesting individual/division. The sourcing specialists are purely tasked with procuring the goods or services as requested.

⁶ Currently, there are approximately four supervisors in the supply chain division for 40 sourcing specialists. The sourcing specialists do not supervise any employees.

⁷ These contract levels for goods and services have increased over the past ten years from original amounts of \$250,000 and \$100,000, respectively.

According to Imperial, sourcing specialists also review requisitions for safety. In this regard, depending on the work being performed (ranging from yard maintenance to excavation), sourcing specialists review the safety grade of the vendor involved in the requisition.⁸ If a vendor's safety grade is lower than acceptable, but the requesting party still wants to use that vendor, the requestor must go through a variance process to justify why they want that vendor. That determination is then made by the Employer's higher ranking officials without the input of sourcing specialists.

In sum, the above record evidence shows that sourcing specialists create requisitions based on requests for goods and services, but cannot cancel a contract without approval from the line of business that requested the requisition and do not have discretion over what items or services are purchased, or the amount of goods or services to be purchased. Anecdotally, Coleman testified that the Employer considers sourcing specialists to be part of the Employer's management team because they commit billions of dollars on behalf of the Employer and the Employer relies upon sourcing specialists to ensure that all materials are delivered to jobsites. However, as noted by the Employer's hierarchical charts, sourcing specialists are approximately seven levels below the Employer's CEO and earn wages that are either comparable with, or below, employees in the existing bargaining unit.

B. Evidence of Other Current Bargaining Unit Employees Job Duties that are Similar to Sourcing Specialists

Senior Union Representative Joshua Sperry (Sperry) testified as to his familiarity with the job duties of the various classifications within the existing bargaining unit aside from the subject sourcing specialists. He testified that employees in the existing bargaining unit perform work that is substantially similar to that performed by sourcing specialists. Specifically, Sperry noted that environmental remediating project managers negotiate outside contracts with vendors. However, environmental remediating project managers require management approval for their various planned expenditures over \$500,000. Sperry further testified that these employees could independently negotiate contracts in the \$100,000 range. Similarly, the Employer's biologists and cultural resource specialists in its Land and Environmental Management Department, who are in charge of compliance with environmental regulations, negotiate contracts with vendors. However, Coleman testified that these employees do not independently negotiate and execute contracts as that work is done by sourcing specialists. Sperry further testified that Hydro Licensing Project Managers in the Hydro Licensing Department can "commit" the Employer to upwards of \$10,000,000, but need approval for higher (unspecified) amounts. This testimony did not describe with particularity what is meant by "commit," and Coleman testified that these employees do not independently negotiate contracts for goods or services. While Sperry noted that Electric Project Managers negotiate purchases of parts and services with outside vendors, Coleman testified that they do not have the ability to independently negotiate contracts for goods and services on behalf of the Employer. Coleman clarified that these employees are responsible for projects, from inception to completion, but not for committing capital. Finally, Sperry testified, without particularity, that certain employee classifications already in the bargaining

⁸ Sourcing specialists do not give or create safety grades. They merely check the grade already established, which the Employer maintains in its electronic database.

unit, including field engineers, use independent judgment in negotiating contracts. In contrast, Coleman testified that these employees do not independently create negotiating strategies or have the authority to independently execute contracts for goods or services on behalf of the Employer.

The Union further proffered testimony from bargaining unit employees Procurement Specialist Stephen Reed (Reed) and Senior Engineering Assistant Maacatalina Santos (Santos) in an effort to establish that bargaining unit employees currently perform similar work to that of sourcing specialists. Reed testified that he procures materials that are needed at the Employer's Diablo Canyon Power Plant. These materials, which can cost in the millions, are requested by engineers and project managers through the Employer's computer system. Reed testified that there are six other procurement specialists at his facility who engage in the same work, plus there are an additional five to six procurement specialists who obtain contracted services. Upon receiving a request for new materials, he inquires as to whether the Employer has already purchased it, and if not, then he sends out requests to sellers for quotes as to the cost of the material desired. After receiving a quote, depending on how "routine" the purchase is, Reed can approve the purchase, up to \$100,000, but must seek approval from management if the cost is greater than that amount. Notably, no sourcing specialists work at the Diablo Canyon Power Plant. Santos testified that she too writes service contracts, based on requests from her supervisors, for amounts up to \$250,000 and needs her manager's approval for greater sums. Santos clarified that she cannot negotiate purchase orders, independently propose vendors, discuss the value of purchase orders with vendors, and she possesses no independent authority to sign a purchase order on behalf of the Employer. Essentially, as Santos stated, the project engineers provide her with all the information she needs regarding materials, vendors, etc, and then she inputs that information into a purchase order contract.

POSITIONS OF THE PARTIES

Citing to *Mack Truck*, 116 NLRB 1576 (1956) and *Simplex Indus., Inc.*, 243 NLRB 111 (1979), the Employer asserts that sourcing specialists are exempt managerial employees and thus cannot be included in the existing collective bargaining unit. The Employer argues that sourcing specialists have discretion and authority to make purchases on behalf of the Employer and are thus exempt. The Employer further argues that sourcing specialists possess the independent authority to negotiate with vendors, research vendors, weight criteria into the selection of vendors, and requesting parties rely on sourcing specialists' recommendations. The Employer is also of the position that Union evidence as to the duties of other employees already in the bargaining unit is of no relevance to this determination.

In contrast, the Petitioner contends that the Employer carry's the burden of establishing that sourcing specialists are managerial and it has not met that burden. To that end, the Union argues that it is the Employer that approves the spending and they instruct sourcing specialists what is to be procured. The Union further asserts that the fact that employees in the existing collective bargaining unit perform similar work is a factor that the Board considers in

determining the managerial nature of employees. In turn, the Petitioner contends that the petitioned-for voting group shares a community of interest with the existing unit.⁹

ANALYSIS¹⁰

Well-settled Board law defines managerial employees as those employees that “formulate, determine, and effectuate an Employer's policies” by expressing, and making operative, the decisions of their employer, and those who have discretion in the performance of their jobs independent of their employer's established policy. *Bell Aerospace*, 219 NLRB 384, 385 (1975) (citations omitted). Normally, an employee may be excluded as managerial only if they represent management's interests by taking or recommending discretionary actions that effectively control or implement their employer's policy. *NLRB v. Yeshiva University*, 444 US 672, 682 (1980). Managerial employees are “much higher in the managerial structure” than statutory supervisors mentioned in the Act by Congress because Congress regarded managerial employees “as so clearly outside the Act that no specific exclusionary provision was thought necessary.” *Id.*

To be considered managerial, employees must exercise discretion within, or even independently of, their employer's policies. *Id.* at 682-683. But, the authority to exercise considerable discretion does not render an employee managerial where their decision must conform to their employer's established policy. *Bell Aerospace*, 219 NLRB at 385.

Moreover, employees whose decision making is limited to the routine discharge of professional duties are not managerial. *See NLRB v. Yeshiva University*, 444 US at 690 (1980). The Board has asserted that while work that is based on technical or professional competence often involves the exercise of discretion and judgment, technical and professional employees are not the same as managerial employees. *Connecticut Humane Society*, 358 NLRB 187 (2012). “Technical and professional employees are not vested with management authority, merely because of their status, even though the work that they perform may have bearing on the direction of the company or where they make recommendations in order to reduce the employer's cost of business.” *Id.*, (citing *Case Corp.*, 304 NLRB 939, 948 (1991), *enfd.* 995 F.2d 700 (7th Cir. 1993)). Further, technical expertise involving the exercise of judgment and discretion does not confer managerial status upon the performer. *Id.*

In *Bell Aerospace*, 219 NLRB 384, the Board found that a group of buyers that received purchase requests, negotiated purchase contracts with outside vendors, and exercised discretion

⁹ During the hearing, the Union offered into evidence a December 15, 2008, arbitration decision regarding whether sourcing specialists may be organized (or are managerial) under the parties' expired neutrality agreement. The arbitrator's decision is of no relevance to my determination as it did not involve a Board hearing or Regional Director's Decision.

¹⁰ In analyzing whether sourcing specialists are managerial employees under the Act, I have concluded that the evidence proffered by the Union regarding the duties of other employees already in the bargaining unit performing similar work as sourcing specialists need not be addressed because the overall evidence clearly establishes that the nature of the discretion sourcing specialists exercise is technical in nature and limited to the routine discharge of their professional duties.

in determining the source and price of items did not hold sufficient discretion to rise to the level of managerial. Notably, the buyers in *Bell* were allowed to negotiate contracts and order items with the company's credit, items over \$5,000 required company authority, buyers executed all purchase orders up to \$50,000, and buyers were guided by numerous manuals and instructions. *Id.* At 385-386.

Conversely, in *Simplex Industries, Inc.*, 243 NLRB 111, 112 - 113 (1979), the Board found that a buyer was managerial, and thus excluded from the prospective bargaining unit, because the individual issued and executed purchase orders without any approval or review of his actions, the employer lacked any procurement policies to guide the employee, his purchasing decision was based on price, delivery, and quality, and he had the authority to initiate contacts with new suppliers and to change suppliers unilaterally. Similarly, in *Mack Trucks, Inc.*, 116 NLRB 1576, 1578 (1956), the Board excluded buyers and assistant buyers as managerial employees because they received requisitions that they filled by placing purchase orders ranging between \$800,000 to \$6,000,000 in the previous year, possessed the authority to negotiate prices, change delivery dates, and adjust disputes with suppliers over rejected items.

As the moving party, the Employer bears the burden of proving that sourcing specialists are managerial employees, *see LaMoyn-Owen College*, 345 NLRB 1123, 1128 (2005), and I find that the Employer failed to carry this burden based on the nature of the discretion that sourcing specialists exercises. First, although sourcing specialists procure goods and services on behalf of the Employer and at times use independent judgment in determining where to obtain these goods and services, that is not always the case. To the contrary, the weight of the testimony indicates that sourcing specialists also fulfill requisitions from master service agreements or catalogs that have predetermined prices and conditions. This work is clearly routine and does not require independent judgment or discretion. To the extent that sourcing specialists go outside of predetermined sources to procure requested items or services, there was no testimony presented as to how often this occurs or that it makes up a majority of sourcing specialists' time. This fact notwithstanding, I further note that the sourcing specialists do not determine the items purchased or services requested. Although sourcing specialists may independently execute contracts for goods and services ranging between \$250,000 and \$500,000, those requests come from others within the Employer's supply chain and it is the sourcing specialists' jobs to fulfill that request. Thus, to the extent that sourcing specialists may look for better pricing or combine orders to save money, even on large orders, such acts are routine and require little independent discretion or judgment and do not rise to the level of formulating, determining, or effectuating the Employer's policies. Since sourcing specialists do not determine the types of goods or services procured, as that information is provided to them, this situation is different from that of *Simplex Industries* where the buyers determined the items to be purchased. To the extent that sourcing specialists' utilizing their professional and technical expertise to search for better deals constitutes discretion, that alone does not make an employee managerial as the end result—what must be procured—is still predetermined by the Employer's requestor. *See Bell Aerospace*, 219 NLRB at 385; *see also NLRB v. Yeshiva University*, 444 US at 690 (1980).

Much of the Employer's evidence discussed the monetary limits in which sourcing specialists may independently execute contracts. While the \$250,000 and \$500,000 independent

limits, respectively, are large sums of money, when compared to the Employer's purported \$6,000,000,000 in yearly spending, the sourcing specialists are actually limited to spending between approximately 0.004% and 0.008% of the Employer's yearly budget without management approval, depending on their classification. In this context, these amounts are minuscule in comparison to the Employer's overall spending. As such, this factor does not weigh in favor of finding that sourcing specialists are managerial employees.

In sum, sourcing specialists' procurement does not constitute "making operative" the Employer's decisions because the goods and services to be obtained have already been predetermined. While some discretion is involved as to whether to work off master service agreements or search for better terms, this type of decision making is routine, based on technical expertise rather than managerial discretion and, most significantly, constrained by the Employer's policies regarding financial limitations and the actual goods or services to be procured. Although there is no doubt sourcing specialists have discretion in carrying out their duties, the evidence does not support a conclusion that their responsibilities are beyond the level that would be expected by individuals exercising routine knowledge and expertise in their field such that they effectively control or implement employer policy. Moreover, sourcing specialists work at the bottom of their structured hierarchy and are many levels removed from management, do not supervise any employees, do not have any responsibility over labor relations, and are not involved in developing or effectuating the Employer's policies. Therefore, I find that sourcing specialists are not managerial.

Finally, I find that, under the Board's *Armour-Globe* doctrine,¹¹ the sourcing specialists share a community of interest with the already represented unit of employees and may vote whether they wish to be included in the existing bargaining unit. *NLRB v. Raytheon Co.*, 918 F.2d 249, 251 (1st Cir. 1990). An incumbent union may petition to add unrepresented employees to its existing unit through an *Armour-Globe* election if the employees sought to be included (1) share a community of interest with unit employees and (2) "constitute an identifiable, distinct segment so as to constitute an appropriate voting group." *Warner-Lambert Co.*, 298 NLRB 993, 995 (1990). In determining whether a group of employees share a community of interest, the Board considers whether the employees are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *United Operations, Inc.*, 338 NLRB 123 (2002).

Applying the factors listed above, I find that employees in the proposed voting group share a community of interest with the existing unit for the following reasons.¹² Although the

¹¹ *Armour & Co.*, 40 NLRB 1333 (1942), and *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937).

¹² I note that the parties did not argue that a lack of community of interest would make a self-determination election inappropriate. Rather, the sole issue presented is whether sourcing specialists are managerial employees under the Act.

record reflects that the sourcing specialists have distinct job functions in their procurement of goods and services on behalf of bargaining unit employees, it is functionally integrated into the existing unit as they procure goods and services for work that will be completed by bargaining unit employees. With respect to overlap between classifications, the record does not reflect the number of employees working for the Employer that would send requisitions to sourcing specialists. However, given the diversity of job functions within the existing unit,¹³ in addition to the fact that the sourcing specialist division accounts for half of the Employer's yearly spending, I accord little weight to any lack of precise overlap in job skills and functions between the proposed voting group and the existing unit. Thus, based on substantial functional integration and frequency of contact between project managers, lines of business, other unit employees, and sourcing specialists, and their common management by Coleman, at the senior director level, I conclude that the petitioned-for voting group shares a community of interest with the existing unit.

I turn next to the question of whether the proposed voting group constitutes a distinct, identifiable segment as required by *Warner-Lambert*, above. The record demonstrates that sourcing specialists share common basic terms and conditions of employment. Sourcing specialists share the same pay bands, and share the same basic job descriptions and skills. The record also reveals that sourcing specialists share the same supervisors.

Upon these facts and the record as whole, I find that the petitioned-for Voting Group has both the requisite community of interest with the existing unit and a distinctive function and diverse community of interest from the remaining unit employees necessary for the establishment of a separate voting group under *Warner-Lambert*.

CONCLUSIONS AND FINDINGS

I have carefully weighed that record evidence and the arguments of the parties, and I conclude that it is appropriate to hold a self-determination election among the employees in the petitioned-for voting group. Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of Section 2(6), (7), and (14) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.¹⁴

¹³ It is noted that in Joint Exhibit 1, the parties' January 1, 2016 through December 1, 2019 collective-bargaining agreement, pages 87 to 97, lists 314 unit classifications.

¹⁴ The parties stipulated that the Employer, a California corporation with an office and place of business in San Francisco, California, is engaged in the business of providing gas and electric utilities to Northern and Central California. During the past 12 months, the Employer derived gross revenues in excess of

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute an appropriate voting group for a self-determination election:

All full-time and part-time employees employed by the Employer at all its locations in the Sourcing Department in the following classifications: Associate Sourcing Specialists, Career Sourcing Specialists, and Senior Sourcing Specialists; excluding employees already represented by a labor organization, confidential employees, office clerical employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by ENGINEERS & SCIENTISTS OF CALIFORNIA, LOCAL 20, INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS (IFPTE), AFL-CIO/CLC.

A. Election Details

I have determined that a mail ballot election will be held.

The ballots will be mailed to employees employed in the appropriate voting group. At **5:00 p.m. on Friday, August 17, 2018**, ballots will be mailed to voters from the National Labor Relations Board, Region 32, 1301 Clay Street, Suite 300N, Oakland, CA, 94612-5224. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Friday, August 24, 2018, should immediately contact the NLRB Region 32 Office located at 1301 Clay Street, Suite 300N, Oakland, CA, 94612-5224, or Nicholas L. Tsiliacos at (510)671-3046.

\$250,000, and purchased and received goods or services in excess of \$5,000, which originated outside the State of California.

All ballots will be counted at the Regional Office on **Wednesday, September 5, 2018, at 10:30 a.m.** In order to be valid and counted, the returned ballots must be received in the Regional Office by 5:00 p.m. on Friday, August 31, 2018.

B. The Ballot

The question on the ballot will be "Do you wish to be represented for purposes of collective bargaining by Engineers and Scientists of California, Local 20, IFPTE, AFL-CIO/CLC?" The choices on the ballot will be "Yes" or "No".

If a majority of valid ballots are cast for Engineers and Scientists of California, Local 20, IFPTE, AFL-CIO/CLC, they will be taken to have indicated the employees' desire to be included in the unit described in Joint Exhibit 1, pages 87 to 97, of the collective-bargaining agreement between the Petitioner and the Employer, effective January 1, 2016 through December 31, 2019.

If a majority of valid ballots are not cast for representation, they will be taken to have indicated the employees' desire to remain unrepresented.

C. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **July 30, 2018**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

D. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Monday, August 13, 2018**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

E. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: August 9, 2018

/s/ Christy Kwon

Christy Kwon
Acting Regional Director
National Labor Relations Board
Region 32
1301 Clay Street Suite 300N
Oakland, CA 94612-5224